

**U. S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D. C.**

In the Matter of:

United Airlines

Respondent.

**SETTLEMENT AGREEMENT
AED/MSEB - 6076**

THIS AGREEMENT is made and entered into by and between the United States Environmental Protection Agency ("EPA") and United Airlines, 1200 East Algonquin Road, Elk Grove Township, Illinois 60007 (hereafter, "United" or "Respondent").

Preliminary Statement

1. Respondent has reported that it had potentially violated section 211(g) of the Clean Air Act ("Act"), 42 U.S.C. § 7545(g), and the regulations issued thereunder at 40 C.F.R. Part 80 ("regulations"), and requested the application of EPA's policy on "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" ("EPA's Self-Disclosure Policy"), as amended on May 11, 2000.
2. The diesel misfueling provision of the Act provides that "no person shall introduce or cause or allow the introduction into any motor vehicle of diesel fuel which such person knows or should know contains a concentration of sulfur in excess of 0.05 percent (by weight)". In addition, the diesel fuel regulations prohibit any person from dispensing, selling, supplying, offering for sale or supply, transporting, or introducing into commerce diesel fuel for use in motor vehicles unless the diesel fuel has a sulfur concentration no greater than 0.05 weight percent. The Act also subjects violators to a civil penalty of up to \$27,500 per day for each violation plus the amount of economic benefit or savings resulting from the violation.
3. EPA's Self-Disclosure Policy allows EPA to not seek a gravity-based (i.e., non-economic benefit) penalty where a person finds the violation through voluntary environmental audits or efforts that reflect due diligence, and promptly discloses and expeditiously corrects the violation.
4. EPA's Self-Disclosure Policy also imposes important safeguards to prevent abuses of its use. These safeguards require: (1) prompt disclosure of the violation, (2) expeditious correction of the violation, (3) action to prevent recurrence of the violation, and (4) action to remedy any environmental harm that occurred as a result of the violation. Additionally, certain violations are ineligible for consideration under the policy such as: (1) repeat violations, (2) violations that caused actual harm, (3) violations that present imminent and substantial endangerment, and (4) violations that will allow companies to gain an economic advantage over competitors by delaying their investment in compliance.

5. The parties, desiring to settle and resolve this matter, in consideration of the mutual covenants and agreements contained herein, which consideration is acknowledged by the parties to be adequate, agree as set forth herein.

Terms of Agreement

6. The parties agree that the settlement of this matter is in the public interest and that this Settlement Agreement is the most appropriate means of resolving the matter.

7. The parties stipulate and agree to the following matters. It is further agreed that these stipulations are applicable to this Agreement and any enforcement or penalty proceeding arising out of this Agreement or the subject matter of this Agreement:

a. During 2000, 2001 and 2002, Respondent conducted a self-audit of all its domestic airport facilities and reported to EPA that it potentially had violated the federal diesel fuels regulations at 40 C.F.R. § 80.29. In summary, Respondent reported that at seventy (70) airport facilities it may have used fuel with a possible sulfur content greater than 0.05 weight percent to fuel five hundred twenty (520) airport ground support vehicles which may be classified as motor vehicles. EPA contends that the use of such fuel in motor vehicles constitutes a violation of section 211(g) of the Act and 40 C.F.R. § 80.29.

b. Respondent took prompt action to remedy the potential violations and prevent future violations. Respondent changed its practices for fueling its motor vehicles to ensure that proper diesel fuel is used. Respondent certifies that it is now in full compliance with the diesel fuel provision of section 211(g) of the Act and 40 C.F.R. § 80.29.

c. Jurisdiction to settle this matter exists pursuant to section 211 of the Act, 42 U.S.C. § 7545, 40 C.F.R. Part 80, and other provisions of law.

8. EPA has determined to remit and mitigate the civil penalty to \$750,000 subject to successful completion of the terms of this Agreement.

a. Respondent agrees to pay \$750,000 to the United States of America in twelve (12) consecutive quarterly payments of \$62,500. The first payment shall be due thirty days from the date that this Agreement has been executed by EPA ("the due date"). Subsequent payments shall be due at three month intervals from the due date (i.e. if the due date were August 15, 2002, the second payment would be due on November 15, 2002 and third payment would be due on February 15, 2003, etc.) Late payment of the civil penalty is subject to interest and fees as specified in 31 U.S.C. § 3717.

b. Respondent agrees to pay the amount by check payable to the "United States of America," and to mail the payment to:

U.S. Environmental Protection Agency
Washington Accounting Operations
P.O. Box 360277M
Pittsburgh, Pennsylvania 15251
Attn: AED/MSEB - 6076

Respondent further agrees to mail a photocopy of the check to:

J. L. Adair, Attorney/Advisor
U.S. Environmental Protection Agency
Mobile Source Enforcement Branch
Air Enforcement Division (2242-A)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
Attn: AED/MSEB - 6076

9. Within one (1) year from the date that this Agreement has been executed by the parties, Respondent agrees to implement a Supplemental Environmental Project ("SEP") to offset any potential environmental harm caused by the improper use of diesel fuel in motor vehicles. The SEP shall consist of the replacement, at Washington Dulles International Airport, of at least six (6) older model diesel powered tractors with new electric powered tractors. Respondent agrees to operate each electric tractor for at least five years from the date the tractor is placed into service.

a. Respondent agrees to certify to EPA that the electric tractors were purchased and placed into service as required in this Agreement. Respondent agrees to submit the certification to J. L. Adair at the address specified in Paragraph 8 of this Agreement within forty-five days of the date the electric tractors are placed into service.

b. Respondent hereby certifies that, as of the date of this Agreement, it is not required to perform the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in any other case or in compliance with any state or local requirements. Respondent also certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

10. Stipulated Penalties.

- a. Time is of the essence to this Agreement. Upon the failure to timely perform pursuant to Paragraph 8 of this Agreement, Respondent agrees to pay a stipulated penalty of \$1,000,000. This stipulated penalty is in lieu of the civil penalty. Upon the failure to timely replace an older model diesel tractor with an electric tractor, Respondent agrees to pay a stipulated penalty of \$50,000 for each failure. Upon any other material failure, Respondent agrees to pay a stipulated penalty of \$200,000.

The parties further agree that upon such default or failure to comply, EPA may refer this matter to the United States Attorney General for collection pursuant to section 211(d) of the Act, 42 U.S.C. § 7545(d), commence an action to enforce this Agreement, or to recover the civil penalty pursuant to section 211 of the Act; or pursue any other remedies available to it. Respondent specifically agrees that in the event of such default or failure to comply, EPA may proceed in an action based on the original claim of violation of section 211 of the Act, 42 U.S.C. § 7545, and Respondent expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of passage of time.

- b. EPA agrees to provide a written notice to Respondent before finding Respondent in default of this Agreement. EPA agrees to send the notice by certified mail, return receipt requested. Respondent shall have five (5) business days to receive the notice in the mail. Thereafter, Respondent shall have ten (10) business days to make the overdue payments or come into compliance with the terms of the Agreement that have become due. The notice shall be sent to Respondent at its last known business address.

11. This Agreement becomes effective upon the date accepted by EPA, at which time a copy will be returned to Respondent at its last known business address.

12. Respondent hereby represents that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so and that such execution is intended and is sufficient to bind Respondent.

13. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters consented to herein.

14. The terms of this Agreement are contractual and not a mere recital. If any provision or provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions shall not in any way be affected or impaired thereby.

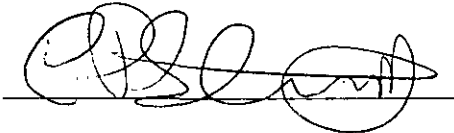
15. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

16. The terms of this Agreement constitute a full and final settlement of all civil and administrative claims and causes of action arising out of the facts admitted to by Respondent in Paragraph 7a of this Agreement. Upon completion of the terms of this Agreement, this matter shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Respondent in the event of default or noncompliance with this Agreement; for violations of section 211 of the Act, 42 U.S.C. § 7545, which are not the subject matter of this Agreement; for other violations of law; or with respect to other matters not within the scope of this

Agreement. This Agreement in no way affects, or relieves Respondent of responsibility to comply with other state, federal or local law or regulations.


The following agree to the terms of this Agreement:

United Airlines

by:  Date: 7/31/02

United States

Environmental Protection Agency

by:  Date: 8/26/02
Bruce C. Buckheit, Director
Air Enforcement Division
Office of Regulatory Enforcement
Office of Enforcement and Compliance Assurance